

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, unless the context otherwise requires, the below listed terms have the following meanings:

**“Agreement”** means the commercial relationship between the Supplier and the Purchaser comprising these Purchase Order Terms and Conditions of Supply together with the Purchase Order.

**“Business Day”** means a working day being a day that is not a Saturday, a Sunday or a public holiday in the State of South Australia or in the State or Territory where the Services are to be performed.

**“Defect”** means any aspect of the Goods supplied not in accordance with this Agreement, or any damage, error, omission, non-conformity, malfunction, deficiency, fault or inadequacy in the design, performance, workmanship, quality or makeup of the Goods or Services.

**“Dollar”** or **“\$”** means a reference to Australian currency unless specified otherwise.

**“Goods”** means any product, item, commodity, material or other thing supplied under this Agreement.

**“GST”** means Goods and Services Tax as set out in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

**“Law”** means legally binding enforceable requirements set out in any statute, ordinance, code or regulations and includes other instruments made pursuant to it.

**“Party”** means a party to this Agreement.

**“Purchaser”** means the legal entity identified as the purchaser on a properly issued Purchase Order.

**“Purchase Order”** means a purchase order issued by the Purchaser to the Supplier and includes any Quote referenced on the Purchase Order, specifications or drawings that may be contained in, or annexed to it.

**“Purchase Price”** means the amount as appears in the Purchase Order including any amendments to the Purchase Price as agreed between the Parties.

**“Quote”** means any quotation or tender offer to supply the Goods or Services by the Supplier to the Purchaser.

**“Services”** means the services (if any) listed in the Purchase Order as varied in accordance with this Agreement from time to time.

**“Statement of Works”** or **“SOW”** means the description of the Goods to be supplied or Services to be performed in the Quote and Purchase Order which, where appropriate, identifies inclusions and exclusions within the SOW.

**“Supplier”** means Mayfield Industries Pty Ltd.

**“Tax Invoice”** means a tax invoice for GST purposes.

**“Variation Proposal”** means the variation proposal provided to the Purchaser in accordance with clause 4.

### 1.2 Interpretation

In this Agreement, except where the context otherwise requires:

- a) the singular includes the plural and vice versa;
- b) a reference to a gender includes all other genders;
- c) a reference to a definition that is capitalised may also be a reference to such definition in lower case;
- d) another grammatical form of a defined word or expression has a corresponding meaning;
- e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure of, this Agreement;

- f) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- g) a reference to time is to the time in South Australia;
- h) a reference to a party is to a party to this Agreement;
- i) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- j) a reference to a Law includes any consolidations, amendments, re-enactments or replacements;
- k) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## **2. PAYMENT, PAYMENT TERMS and RETENTIONS**

- 2.1 Payment is to be made by electronic transfer of funds into the Supplier nominated bank account.
- 2.2 Except as otherwise expressly agreed, Payment is to be made free of any deduction whatsoever including any set off against other amounts that the Supplier may owe to the Purchaser under this Agreement or otherwise.
- 2.3 All prices are quoted exclusive of GST.
- 2.4 Unless expressly stated otherwise in the Purchase Order, the Purchaser agrees to pay standard delivery charges as invoiced for any Goods delivered to the Purchaser's premises or site.
- 2.5 Payment shall be made within thirty (30) days from date of receipt of a Tax Invoice unless specified otherwise.
- 2.6 The Supplier shall be entitled to charge interest at the rate of 10% per annum for any amount that has not been paid by the due date.

## **3. OWNERSHIP, TITLE AND RISK**

- 3.1 Title to Goods will pass to the Purchaser on receipt of payment in full for those Goods.
- 3.2 Risk in the Goods shall pass to the Purchaser on delivery, but prior to unloading, of the Goods to the Purchaser's premises.
- 3.3 The Purchaser and the Supplier shall retain ownership of any intellectual property that each owned as at the date of entering into this Agreement and thereafter. Where the Supplier supplies any item of intellectual property in accordance with this Agreement it shall, unless explicitly stated otherwise, remain the owner of that intellectual property. The Supplier will grant a non-exclusive, royalty free, transferable and perpetual license to use that intellectual property for the purposes for which such license is granted.

## **4. VARIATIONS AND CHANGES TO COST OF MATERIALS**

- 4.1 The Purchaser may, by notice in writing, request a variation to this Agreement in respect of the Goods or Services supplied under the Agreement. The Supplier will, within 5 Business Days, provide a proposal to the Purchaser in respect of such a variation prior to implementing the changes as requested ("Variation Proposal"). The Variation Proposal shall include the impact of the variation on the SOW, Purchase Price and the schedule for delivery of the Goods or completion of the Services.
- 4.2 The Variation Proposal must be valid for at least 5 Business Days.
- 4.3 This Agreement shall be amended on acceptance of the Variation Proposal by the Purchaser.

## **5. EXTENSION OF TIME**

The Supplier shall be entitled to an extension of time in addition to the recovery of reasonable costs incurred in respect of a delay if the Supplier, through no fault of its own, is delayed by the Purchaser or by an event beyond its reasonable control including force majeure.

## **6. TRADE CREDIT ACCOUNTS**

- 6.1 Unless otherwise agreed in writing, a Purchaser without a credit account with the Supplier must pay the Purchase Price in full before the Goods or Services will be supplied.
- 6.2 The Supplier can vary or withdraw any credit facility at its discretion, without liability to the Purchaser or any other party.

## **7. RETURNS AND CANCELLATIONS**

- 7.1 Cancellations for custom-made Goods will not be accepted once the Supplier has commenced manufacturing the Goods.
- 7.2 Custom-made materials, including cables, are not returnable for credit unless proved to be faulty.
- 7.3 Subject to clause 7.1 and 7.2, the Purchaser may return Goods purchased from the Supplier for credit subject to the following:
  - a) the Goods are returned to the Supplier with the original invoice within thirty (30) days of the invoice date;
  - b) the Goods are new and unused;
  - c) the Goods are in the original packaging, which has not been damaged or altered.
- 7.4 Goods accepted for return will be subject to a 20% restocking fee at the Supplier's discretion.
- 7.5 Except where Goods have been returned because they are faulty or incorrectly delivered in terms of the Agreement, credit for returned Goods will be in the form of company credit or refund at the Supplier's discretion.
- 7.6 The Purchaser must advise the Supplier if it believes that Goods supplied are faulty within thirty (30) days of invoice date and may be returned to the Supplier for exchange, credit or refund.
- 7.7 Except when incorrectly supplied, the Purchaser will be responsible for payment of any return freight charges.

## **8. PRODUCT AND SERVICE GUARANTEE AND WARRANTY**

- 8.1 Goods manufactured by the Supplier carry a twelve (12) month warranty against faults or defects excluding damage caused by those circumstances outlined in clause 8.2.
- 8.2 Subject to Australian Consumer Law, Goods supplied by the Supplier shall have the warranty provided by the manufacturer of the Goods. The Supplier will not be liable for any damage caused by:
  - a) external causes including natural disaster, fire, water, lightning, power surge or spike, accident, neglect, misuse, vandalism;
  - b) use of the Goods for other than its intended purpose;
  - c) use with or connection of the Goods to items not approved by the Supplier;
  - d) the performance of maintenance or attempted repair by persons other than the Supplier or as authorised by the Supplier; and/or
  - e) any configuration or reconfiguration by the Purchaser.

## **9. LIMITATIONS AND EXCLUSIONS OF LIABILITY**

- 9.1 The Supplier shall not be liable for any damage to material, people or property, or the works caused by the Purchaser or third parties and shall not be required to indemnify any party for any damage caused by others.
- 9.2 The Supplier will not be liable for any delays caused by others.
- 9.3 Neither Party shall be liable to the other for any consequential, special, economic, incidental or indirect losses including, but not limited to, loss of production or production stoppage, loss of profit or anticipated profit, loss of revenue or other form of consideration, loss of income or anticipated savings, loss of use, loss of Agreement or repudiation of Agreement, loss of data, loss of goodwill or

reputation, loss of opportunity, business interruption, holding over or overhead loss, loss of future business or for any punitive or exemplary damages.

- 9.4 Notwithstanding any other provision in this Agreement, the maximum aggregate liability of each Party to the other under this Agreement shall not exceed 100% of the Purchase Price.

**10. PROPORTIONATE LIABILITY**

Notwithstanding any other term of this Agreement, the Supplier's liability for any loss or damage arising as a consequence of a breach of this Agreement or arising under any indemnity is reduced proportionally to the extent the act or omission (deliberate or negligent) of the Purchaser or any other person (other than the Supplier or its employees, agents or subcontractors) contributed to the loss or damage incurred in accordance with the Law Reform (Contributory Negligence and Apportionment of Liability) Act 2001.

**11. INSURANCE**

The Supplier shall procure and maintain Public and Product Liability and Professional Indemnity cover appropriate to the supply under this Agreement and, on request, will provide proof that appropriate insurance cover is in place.

**12. CONFIDENTIALITY**

The Parties shall keep strictly confidential between them all information of a confidential or proprietary nature shared under the Agreement. The Party receiving confidential information will not, during or after the term of this Agreement, use any such confidential information for any purpose other than to perform the Party's obligations or exercise the Party's rights under this Agreement or disclose any such Confidential Information to any third party.

**13. DISPUTES**

- 13.1 All reasonable endeavors shall be made to resolve any disagreement, doubt, difference or dispute (Dispute) in relation to this Agreement by mutual agreement.
- 13.2 In the event that agreement has not been reached within ten (10) Business Days of the Dispute being notified in writing by one Party to the other, then either Party to the Dispute may give notice to the other that the matter be referred to formal mediation by a mediator and at a venue agreed to between the Parties or, failing agreement within ten (10) Business Days of the notice, by a mediator and at a venue appointed by the President of the Law Society of South Australia or his or her nominee (the Mediator) then:
- a) the mediation must commence as soon as reasonably practicable from the appointment of the Mediator;
  - b) the mediation is to take place by such procedures and at such times as the Parties and the Mediator may agree;
  - c) the Parties to the Dispute are to agree the costs and expenses of the mediation with the Mediator and the costs and expenses of the mediation shall be borne equally by the Parties to the Dispute.
- 13.3 In the event of there being any dispute as to payment or non-payment of monies then in such case the provisions of the relevant Security for Payments Legislation shall apply.
- 13.4 Nothing in this Agreement shall prevent either Party from taking any action whatsoever seeking summary or urgent relief.

**14. MISCELLANEOUS**

- 14.1 **Waiver:** The waiver by either Party of any breach of the Agreement shall not operate as a waiver of any subsequent breach whether of the same nature or otherwise. The failure of either Party to exercise any right which it may have in the event of a breach of the Agreement shall not be deemed to be an abandonment or waiver of any right for damages injunction or otherwise.

- 14.2 **Entire Agreement:** This Agreement is the entire agreement and understanding for supply of Goods or Services between the Parties and merges all prior discussions, conditions, warranties or representations with respect to the subject of this Agreement other than as expressly provided otherwise.
- 14.3 **Severance:** Each clause and sub-clause of the Agreement is to be read as a separate and severable provision. If any provision is found to be void or unenforceable, that provision may be severed, and the remainder of the Agreement must be interpreted as if the severed provision had never existed.
- 14.4 **Force Majeure:** The non-performance or delay in performance by a Party of any obligation under the Agreement is excused during the time and to the extent that such performance is prevented by a force majeure event, provided that the Party affected by the force majeure event uses its best endeavors to perform as soon as possible its obligations under the Agreement (including by the use of reasonable workarounds and interim measures). If a force majeure event continues for more than twenty (20) Business Days, either Party may terminate the Agreement immediately by notice in writing to the other Party.
- 14.5 **Governing Law:** This Agreement is governed by the laws of South Australia and each Party submits to the jurisdiction of the courts of South Australia.
- 14.6 **Non-Merger:** All obligations of the Parties which expressly or by their nature survive the expiration or termination of the Agreement shall continue in full force and effect notwithstanding such expiration or termination. Termination of the Services in accordance with the Agreement does not affect the clause relating to limitation of liability.